

peared and defended the suit; provided nevertheless, that the answer of the heir or heirs appearing shall not operate against any absent heir, otherwise than if such absent heir had appeared, and defended the suit, but the chancellor, on application of the complainant, may, at discretion, either take the bill pro-confesso as to all absent heirs of the deceased, or direct a commission to issue for taking depositions *ex parte*, and receive such proof as he may think proper; provided also, that if any heir of the deceased shall, in person or by a solicitor, appear in court at any time before a decree shall be passed, and shall, on or before the fourth day of the subsequent term, put in a good and sufficient answer to each interrogatory stated in the bill, or a good plea or demurrer to the same, the proceedings shall thereafter be the same as if such heir had regularly appeared to a summons; and if at any time within nine months after a decree passed without his appearance, any heir shall appear, and file a petition, praying the chancellor to set aside the decree, and likewise answer, plead or demur as aforesaid, the chancellor shall accordingly annul the decree as to such heir, and there shall be the same proceedings for the purpose of deciding the cause on its merits, as if the said heir had regularly appeared to a summons.

See 1785, ch. 72, ante page 208.

SEC. 3. *And be it enacted*, That in case a subpoena to a bill in chancery shall be regularly returned non est by the sheriff of any county within the state where the defendant shall be known, or generally supposed to reside, and the chancellor shall be satisfied, by the affidavit of some indifferent person or persons, of the said known or supposed residence, and of the defendant's having avoided, or kept out of the way of the sheriff, or evaded the service of the subpoena, the chancellor, on motion, may direct publication to be given in some newspaper convenient to the known or supposed residence of the defendant, at least three weeks successively, of the filing of the bill, and of its substance and object, and of the same day by him fixed, not less than four months subsequent to the publication, for the defendant's appearance in court, either in person or by solicitor; and on the defendant's failing to appear, and on satisfactory proof of the notice published, the chancellor, on motion, may proceed in the same manner as is prescribed by law in the case of a bill filed against a non-resident; provided, that the said defendant have the same privilege as is herein before given to an absent heir, to appear, either before or after a decree; and every part of the provision herein contained, respecting the proceedings on appearance of such heir, shall be construed to extend to such evading defendant.

And in certain cases direct publication, &c.